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Com. v. Hunt, 4 Metc. (Mass.), 111, 122, 38 Am. Dec. 346; *State v. Buchanan*, 5 Har. & J. 317, 333, *et seq.*, 9 Am. Dec. 534; *Reg. v. Warburton*, L. R. 1 Cr. Cas. 274, 276. The use of secret combination, which is itself a fraudulent device, dangerous to the public, imparts to the cheat thus accomplished the necessary element of criminality, and the combination to that end is a criminal conspiracy."

Cf. *Com. v. Meserve*, 154 Mass. 64; *McKee v. State*, 111 Ind. 378.

CORPORATIONS — LIABILITY FOR ASSAULT BY SERVANTS — PLEADING. — Plaintiff visited the store of defendant company for the purpose of purchasing goods, where for some cause not stated, or without cause, she was set upon by defendant's employees and beaten and thrown to the floor, sustaining serious injuries. Held, that the defendant as a corporation is liable as an individual for the acts of its servants done in the course of their employment as such. *Mossession v. Callendar etc. Co.* (R. I.), 52 Atl. 806.

Rogers, J., alludes to the confusion in the law upon this point and its alteration from time to time, and makes the following quotations in support of the ruling of the court:

"Chitty, in his work on Pleading (volume 1, 13th Am. Ed. *76), says, 'With regard to the liability of corporations, it is a clear general rule that they are liable to be sued as such in case or trover for any torts they may cause to be committed. It has been laid down that a corporation cannot be sued in its corporate capacity in trespass; but this position appears to be incorrect, for, although a corporation cannot as a corporate body actually commit a trespass, yet they may order it to be done, and ought, therefore, to be responsible for the consequences. In these cases it is often very material to fix the corporation with liability, and to be entitled to redress from the corporate funds, rather than to be driven to a remedy against servants of the corporation.' Seventy years later, Mr. Justice Swayne, in *Bank v. Graham*, 100 U. S. 699, 702, 25 L. Ed. 750, used this language: 'Corporations are liable for every wrong they commit, and in such cases the doctrine of *ultra vires* has no application. They are also liable for the acts of their servants, while such servants are engaged in the business of their principal, in the same manner and to the same extent that individuals are liable under like circumstances. An action may be maintained against a corporation for its malicious or negligent torts, however foreign they may be to the object of its creation, or beyond its granted powers. It may be sued for assault and battery, for fraud and deceit, for false imprisonment, for malicious prosecution, for nuisance, and for libel. In certain cases it may be indicted for misfeasance or nonfeasance touching duties imposed upon it in which the public are interested. Its offenses may be such as to forfeit its existence.'"

INTERNAL REVENUE — BANKS AND BANKERS — CAPITAL — SURPLUS. — The war revenue act of 1898 provides that bankers and persons, firms and companies engaged in similar occupations shall pay a certain tax upon a fixed capital and an additional amount upon every thousand dollars over that

amount, and that the tax shall be computed on the basis of the capital and surplus. *Held*, That the word "surplus" includes the entire overplus of assets over liabilities, without regard to the fact that a portion thereof has been set aside by the officers of the bank as a sort of reserved additional capital. *Leather Mfrs. Nat. Bank v. Treat* (C. C.), 116 Fed. 774.

Per Lacombe, Circuit Judge:

"If this section of the war revenue law dealt only with national banks, there would be much force in the argument that Congress must be assumed to have used the word 'surplus' with the same meaning as in the earlier acts specially relating to such banks. But when this section was passed, imposing a tax upon capital employed in banking, including surplus, the attention of Congress was not confined to national banks, as may be seen from the careful enumeration of individuals affected by its provisions. It can hardly be assumed that Congress used the word in this section intending that it should mean one thing when applied to a national bank and another thing when applied to a banking firm. Nor does it seem reasonable to hold that Congress intended to require every one engaged in the banking business, except national banks, to pay tax on the entire excess of assets over liabilities, while those corporations were required to pay only on part of such excess. And it would seem absurd to hold, though it seems to be a natural corollary from the propositions advanced by plaintiff, that a board of directors could set aside large sums each year from the profits, accumulating an additional fund equal perhaps to the capital, and used in the same way, and escape the tax upon it by the simple device of calling it 'undivided profits.' It would seem, rather, that Congress used the word 'surplus' in its ordinary sense, as indicating the amount left over after setting aside sufficient of the assets of a banker to meet his liabilities."

This decision settles, as far as it goes, a vexed controversy of some years' standing between the banks and the Internal Revenue Department.

EMINENT DOMAIN—MUNICIPAL CORPORATIONS—PRIVATE CORPORATIONS.—

A water supply system belonging to a private corporation may be acquired by the public on payment of just compensation, and the facts that the water company has issued its bonds and mortgaged its property to secure them, and has also assumed fixed permanent obligations to certain municipalities to supply them with water, do not exempt its property and franchise from the power of eminent domain. These are mere incidents, to be considered in the appraisal. *Kennebec Water District v. City of Waterville* (Me.), 52 Atl. 774. Citing *Long Island Water Supply Co. v. Brooklyn*, 166 U. S. 685; *Bridge Co. v. Dix*, 6 How. 507, 12 L. Ed. 535; *Boston & L. R. Corp. v. Salem & L. R. Co.*, 2 Gray, 1; *Enfield Tollbridge Co. v. Hartford & N. H. R. Co.*, 17 Conn. 454, 466, 44 Am. Dec. 556; *White River Turnpike Co. v. Vermont Cent. R. Co.*, 21 Vt. 590; *Brainard v. Railroad Co.*, 48 Vt. 107; *In Re City of Brooklyn*, 143 N. Y. 596, 38 N. E. 983, 26 L. R. A. 270; *Backus v. Lebanon*, 11 N. H. 19, 49 Am. Dec. 139.

Per Folger, J:

"The power of eminent domain is not created by constitution or statute.